

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

RABINOWITZ, LUBETKIN & TULLY, LLC
293 Eisenhower Parkway, Suite 100
Livingston, NJ 07039
(973) 597-9100
Jay L. Lubetkin, Esq.
*Counsel to Jay L. Lubetkin,
Chapter 7 Trustee*

In re:

CIRCLE 10 RESTAURANT, LLC,

Debtor.

FILED
James J. Waldron, Clerk

JUL 12 2013

U.S. Bankruptcy Court, Newark NJ
BY: Deputy

Case No. 13-14820 (RG)

Chapter 7

**ORDER APPROVING SETTLEMENT, AUTHORIZING SALE OF
LIQUOR LICENSE, AND FOR OTHER RELATED RELIEF**

The relief set forth on the following pages, numbered two (2) through five (5), is hereby

ORDERED.

7-12-13

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Cosentino Guindarella
USBJ

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THIS MATTER having been opened to the Court by Jay L. Lubetkin, Chapter 7 Trustee (the “Trustee”) of the bankruptcy estate of Circle 10 Restaurant, LLC (the “Debtor”), by and through his counsel, Rabinowitz, Lubetkin & Tully, L.L.C., upon the filing of an Application seeking Court approval of the sale of the Debtor’s liquor license (the “Liquor License”) to Onyx Equities III, LLC (“Onyx”), for a purchase price now of \$835,000; and the Court having entered an Order (the “Abbotts Dairies Order”) on June 11, 2013, establishing Onyx’s satisfaction of In re Abbotts Dairies of Pennsylvania, Inc., 788 F. 2d 143 (3d Cir. 1986); and the Court having further having considered the objection to the sale filed by Lim Chew Corp. (the “Landlord”), arguing that pursuant to its Right of First Refusal Agreement with the Debtor, it is entitled to purchase the Liquor License for the sum of \$135,000; and the Court noting the filing of numerous rounds of briefs by the Trustee, Onyx, and the Landlord respecting the issues relating to the estate’s alleged ability to sell the Liquor License notwithstanding the Right of First Refusal Agreement, the Trustee’s argument that the Right of First Refusal Agreement was deemed rejected by operation of law sixty (60) days after the commencement of the within bankruptcy filing, the Trustee’s argument that the Right of First Refusal Agreement is part and parcel of the Lease Agreement between the Landlord and the Debtor which is the subject of the Trustee’s filed Application to reject, and the Landlord’s argument that it is entitled to specific performance of the Right of First Refusal Agreement, notwithstanding its rejection either by operation of law or in connection with the rejection of the Lease Agreement; and the Court noting the existence of case law authority supporting both the Landlord’s and the Trustee’s positions, the absence of controlling legal

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precedent in the Third Circuit, the likelihood of significant delays in any sale of the Liquor License associated with a judicial determination on the contested issues by the Bankruptcy Court and the prospect of appeals to the District Court and the Third Circuit Court of Appeals; and the parties having agreed to terms of a proposed settlement of the disputes at the hearing intended to be conducted on June 26, 2013; and notice of the proposed settlement having been provided to the Debtor, its creditors, its members, and all parties in interest; and good and sufficient cause existing for the making and entry of the within Order

IT IS ORDERED that the Trustee is authorized and directed to take all actions and execute all documents which may be necessary and appropriate to effectuate the sale of the Debtor's Liquor License to Onyx for the sum of \$835,000, free and clear of restrictions, special conditions or limitations, all vendors charges, violations, restrictions, liens, liquor bills, claims, interests, and encumbrances (collectively, the "Encumbrances"), such Encumbrances to attach to the proceeds of sale, excepting from any such encumbrances a \$62,500 portion of the proceeds; and it is further

ORDERED that the transfer of the Liquor License to the Purchaser shall be free and clear of all Encumbrances; and it is further

ORDERED that the Agreement to Purchase Alcoholic Beverage License which was the subject of the Application in support hereof is hereby deemed amended to provide for a purchase price of \$835,000, and may be further amended without further order of the Court, provided that

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any such amendment or modification is non-material and does not have an adverse effect on the Trustee or the Debtor's bankruptcy estate; and it is further

ORDERED that the terms of the Court's Abbotts Dairies Order are hereby incorporated herein by reference; and it is further

ORDERED that the Lease Agreement between the Debtor and Landlord is hereby rejected; and it is further

ORDERED that the Right of First Refusal Agreement between the Debtor and the Landlord is deemed rejected; and it is further

ORDERED that immediately after closing on the sale of the Liquor License to Onyx, \$62,500 shall be paid by the Trustee to the Landlord as a consensual "buy out" of any purported first refusal rights Landlord might otherwise hold respecting the Liquor License; and it is further

ORDERED that Landlord shall have an allowed general unsecured claim herein of \$1,624,621.59; and it is further

ORDERED that Landlord's objection to the proposed sale by the Trustee of the Liquor License to Onyx is hereby withdrawn; and it is further

ORDERED that any and all claims which the Trustee or the Debtor's bankruptcy estate may have against the Landlord, including any claims to recoveries by the Landlord of real estate taxes paid resulting from real estate tax appeals are hereby waived, discharged, released, and barred; and it is further

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ORDERED that any and all claims which Landlord may have against the Debtor's bankruptcy estate and the Trustee, other than those monetary claims provided for herein, are hereby waived, released, discharged, and barred, with the express understanding that such waiver shall not impair, prejudice, or otherwise negatively impact whatever claims, if any, Landlord may hold against the members of the Debtor; and it is further

ORDERED that the Trustee is authorized and empowered to take any and all actions necessary to implement the terms of this Order; and it is further

ORDERED that the Limited Objection to the proposed settlement filed by Neal Erman is overruled.